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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re JORGE M., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE M.,

Defendant and Appellant.

B238631

(Los Angeles County
Super. Ct. No. FJ49096)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robin Miller Sloan, Judge. Affirmed as modified.

Leslie G. McMurray, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, James William Bilderback II and Mark E. Weber, Deputy Attorneys General, for Plaintiff and Respondent.

Jorge M. (the minor) appeals from a judgment declaring him a ward of the court under Welfare and Institutions Code section 602 and Penal Code section 211.¹ He contends the finding that he committed a robbery is not supported by substantial evidence. We modify the disposition minute order to strike the maximum term of confinement and affirm the judgment in all other respects.²

FACTUAL AND PROCEDURAL BACKGROUND

Viewed in accordance with the usual rules on appeal (*People v. Zamudio* (2008) 43 Cal.4th 327, 357), the evidence established was as follows:

Jessica's Testimony. About 7:00 p.m. on June 9, 2011 Jessica L. was walking alone on Avalon Boulevard wearing a thick gold necklace and listening to her iPod. While looking down at her iPod, Jessica felt someone push against her chest and then yank off her necklace, leaving a scratch on her neck that was still visible the next day. When she felt the hand on her chest, Jessica immediately looked to her right and saw the minor's profile as he rode away on a silver bicycle. Jessica was crying as she pursued the minor. When the minor turned left, Jessica ran up to two police officers in a police car and reported the incident to them. The officers told Jessica to describe her assailant "specifically." Jessica "described how the guy looked" and the officers broadcast her description. For the next several minutes, the officers drove Jessica around looking for her assailant. Then the officer received a radio call from other officers that they "had got the guy." Jessica's testimony suggests she heard the radio call while in the police car.

Jessica was brought to a location to see "whether it was the correct person." Regarding what occurred immediately before the field show up, Jessica testified as follows: "[DEFENSE COUNSEL]: What were you told before that happened? Did they

¹ All future undesignated statutory references are to the Penal Code.

² The minor contends and the People concede that the juvenile court erred in stating a maximum term of confinement on the minute order because the minor was not removed from his parents' physical custody. (See *In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.) We agree.

explain to you what was happening or what was about to happen? [¶] [JESSICA]: They asked me how he looked and I described. [¶] [DEFENSE COUNSEL]: Did they say anything about okay, you know, we're going to show you a person and you tell us if that's the person? [¶] [JESSICA]: They did. [¶] [DEFENSE COUNSEL]: Do you remember like exactly what they told you? [¶] [JESSICA]: To be very specific of how he looked. That's pretty much what I remember. [¶] [DEFENSE COUNSEL]: Is that before they took you to look at the person? [¶] [JESSICA]: Right there, no. [¶] [DEFENSE COUNSEL]: When you first – [¶] [JESSICA]: When I seen the guy, he was right in front. They told me to describe him but he was already there, and I told them that was the guy.”

About 15 minutes elapsed between the robbery and when Jessica was brought to the location where the minor was being detained by an officer in front of a police car and Jessica was asked to describe her assailant a second time. Jessica was still seated inside the patrol car when she identified the minor as her assailant.

Officer Gutierrez's Testimony. About 7:00 p.m. that night, Los Angeles Police Officer Manuel Gutierrez noticed the minor enter a security gate and sit down on some steps; a silver BMX style bicycle was leaning against him. While talking to the minor, Gutierrez received a radio call stating that a robbery had occurred about 10 minutes before just a few blocks away. Gutierrez was present when Jessica was brought to the location and identified the minor. Gutierrez searched the minor but no necklace was found on his person. Gutierrez and other officers looked for the necklace in the area around where the minor had been sitting, but did not find it. Officers also searched the minor's house but found nothing. The minor was detained in Juvenile Hall and then released into his parents' custody.

A section 602 petition was filed on June 13, 2011, alleging that the minor committed second degree robbery. Following a hearing on January 18, 2012, the juvenile court sustained the petition and placed the minor home on probation. The minor timely appealed.

DISCUSSION

A. *Substantial Evidence Supports the Finding That the Minor Committed Second Degree Robbery*

The minor challenges the sufficiency of the evidence that he was the perpetrator of the charged robbery, as well as the evidence of force or fear. We find no merit in either contention.

1. Standard of Review

Juvenile cases are subject to the same standard of review as adult criminal cases. (*In re Matthew A.*, *supra*, 165 Cal.App.4th at p. 540.) That is, “we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] ‘Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]’ [Citation.] A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” ’ the [trier of fact’s] verdict. [Citation.]” (*Zamudio*, *supra*, 43 Cal.4th at p. 357.) The testimony of a single witness is sufficient to prove any disputed fact. (*People v. Richardson* (2008) 43 Cal.4th 959, 1030-1031.) It is the trier of fact, not the appellate court, that must be

convinced of the defendant's guilt beyond a reasonable doubt. (*Zamudio, supra*, at p. 358.)

2. Identification

Defendant argues Jessica's identification did not constitute substantial evidence because, among other things, she had only a brief glimpse of her assailant's profile as he rode quickly past her, the field show-up was tainted because an officer told Jessica "we got the guy," and the minor was the only suspect at the field show-up.³ We disagree.

Jessica's testimony was that before she was taken to the field lineup she "identified" the minor. Even if she was influenced by the radio call that "we got the guy," the record suggests that she gave an identification of her assailant before the minor was brought before her. It is well settled that field lineups are not inherently suggestive. (*People v. Floyd* (1970) 1 Cal.3d 694, 714, disapproved on another point by *People v. Wheeler* (1978) 22 Cal.3d 258, 287, fn. 36.) It was for the trial court to determine the weight to be given to her identification, taking into account the glimpse Jessica got of her assailant, her description of the assailant in the police car, the lack of any evidence that the police officer gave her a standard pre-field lineup admonition, the circumstances of the field identification, and the certainty of her field and court identification.

Although there certainly were weaknesses in the identification, we cannot say that her testimony was unreliable as a matter of law. Accordingly, her identification of the minor constitutes substantial evidence.

3. Force or fear

The minor contends there was insufficient evidence of the force or fear element of robbery. He argues that Jessica's testimony that she felt nothing when the perpetrator yanked off her chain is not substantial evidence of the requisite force. We disagree.

³ We note that there was no motion to exclude the out-of-court identification. Respondent contends that minor's argument about the deficiency in the identification was forfeited. We address the merits of minor's point.

In *People v. Roberts* (1976) 57 Cal.App.3d 782, 787 (disapproved on another point in *People v. Rollo* (1977) 20 Cal.3d 109, 120, fn. 4), evidence that the defendant grabbed the victim's purse with such force that the handle broke was held sufficient to support a robbery conviction based on force. (See also *People v. Burns* (2009) 172 Cal.App.4th 1251, 1259 [when victim tried to hold on to her purse, defendant stepped on her foot to overcome her resistance].) Here, evidence that Jessica's assailant pushed her in the chest before grabbing her necklace with such force as to yank it off her neck, leaving a mark, constitutes substantial evidence of the force element of robbery.

DISPOSITION

The maximum term of confinement in the court's minute order is stricken. In all other respects the judgment is affirmed.

RUBIN, Acting P. J.

WE CONCUR:

FLIER, J.

SORTINO, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.